

1
2 UNITED STATES DISTRICT COURT
3 NORTHERN DISTRICT OF CALIFORNIA
4 SAN FRANCISCO DIVISION

5 WAYMO LLC,
6 Plaintiff,
7 vs.
8 UBER TECHNOLOGIES, INC.;
9 OTTOMOTTO LLC; OTTO TRUCKING
10 LLC,
11 Defendants.

CASE NO. 3:17-cv-00939

**SECOND AMENDED JOINT PROPOSED
PRETRIAL ORDER**
**FILED UNDER SEAL PURSUANT TO
PROTECTIVE ORDER**

Trial Date: February 5, 2018

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SECOND AMENDED JOINT PROPOSED PRETRIAL ORDER

Pursuant to the Court's Guidelines for Trial and Final Pretrial Conference in Civil Jury Cases, the parties submit the following Second Amended Joint Proposed Pretrial Order.

I. CLAIMS AND DEFENSES THAT REMAIN TO BE DECIDED

A. Waymo's Submission

Two of Waymo’s claims for relief remain to be decided. First, Waymo asserts a violation of the Defend Trade Secrets Act, 18 U.S.C. § 1836(b)(1). (FAC Claim 1.) Waymo claims that Uber and Ottomotto improperly acquired, used, or disclosed Waymo-owned information relating to its self driving car technology, including custom LIDAR systems that are used to enable the operation of fully self-driving vehicles. This information comprises one or more of the identified Waymo-owned trade secrets, including Waymo LiDAR designs, and one or more of these Waymo-owned trade secrets are related to a product or service used in, or intended for use in, interstate or foreign commerce. Waymo has taken reasonable measures to keep such information secret and confidential. Waymo has at all times maintained stringent security measures to preserve the secrecy of its trade secrets, and Waymo’s trade secret information derives independent economic value from not being generally known to, and not being readily ascertainable through proper means by, another person who could obtain economic value from the disclosure or use of the information. Defendants’ misappropriation of Waymo’s trade secret information was intentional, knowing, willful, malicious, fraudulent, and oppressive.

20 Second, Waymo asserts a claim of violation of California Uniform Trade Secret Act, Cal.
21 Civ. Code § 3426 *et seq.* (FAC Claim 2.) Waymo claims that Uber and Ottomotto improperly
22 acquired, used, or disclosed Waymo-owned information relating to its self driving car technology,
23 including custom LIDAR systems that are used to enable the operation of fully self-driving
24 vehicles. This information comprises one or more of the identified Waymo-owned trade secrets,
25 including Waymo LiDAR designs, and one or more of these Waymo-owned trade secrets were
26 trade secrets at the time of the misappropriation. Waymo has undertaken efforts that are
27 reasonable under the circumstances to maintain the secrecy of the trade secrets at issue.
28 Defendants knew or should have known under the circumstances that the information

1 misappropriated by Defendants were trade secrets. Defendants misappropriated and threaten to
 2 further misappropriate trade secrets at least by acquiring trade secrets with knowledge of or
 3 reason to know that the trade secrets were acquired by improper means, and Defendants are using
 4 and threatening to use the trade secrets acquired by improper means without Waymo's knowledge
 5 or consent. The aforementioned acts of Defendants were willful, malicious and fraudulent.¹ As
 6 detailed in Waymo's recent Offer of Proof (Dkt 2466-3), Defendants have systemically attempted
 7 and continue to attempt to conceal their misappropriation of Waymo's trade secrets.

8 Pursuant to this Court's Order (Dkt. 563), on August 1, Waymo elected nine trade secrets
 9 it would present at trial. They are described in Waymo's trade secret list, provided before
 10 discovery began in this matter (Dkt. 25-7), including:

11 a. **Waymo's Trade Secret No. 2 is** [REDACTED]

12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]

15 b. **Waymo's Trade Secret No. 7 is** [REDACTED]

16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]

19 [REDACTED] ².

20 c. **Waymo's Trade Secret No. 9 is** [REDACTED]

21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]

24 ¹ No other Waymo claims currently remain for trial. Waymo's patent infringement
 25 claims (FAC 3, 4, 5, 6) were dismissed by stipulation. (Dkt. 449, 1550.) Waymo's unfair
 26 competition claim (FAC 7) was dismissed by order of the Court. (Dkt. 576.) Otto Trucking was
 dismissed as a defendant in this case. (Dkt. 2151.)

27 ² As described with more particularity in Dkt. 335-4.

- 1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
- 4 d. Waymo's Trade Secret No. 13 is [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
- 8 e. Waymo's Trade Secret No. 14 is [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
- 13 f. Waymo's Trade Secret No. 25 is [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED] [REDACTED]
- 18 g. Waymo's Trade Secret No. 90 is [REDACTED]
19 [REDACTED]
- 20 h. Waymo's Trade Secret No. 111 is [REDACTED]
21 [REDACTED]

22 Waymo reserves the right to pursue additional trade secrets, including based upon
23 information discovered as a result of Defendants' late disclosure of the Stroz due diligence report
24 and associated documents. (Dkt. 2129 (holding in abeyance Waymo's motion for leave to add
25 trade secret claims).)³

26 _____
27 ³ This Court granted Defendants' motion for summary judgment with respect to Trade
28 Secret No. 96. (Dkt. 2151.)

1 **B. Uber's Submission**

2 Uber Technologies, Inc., and Ottomotto LLC (together, "Uber") deny Waymo's claims.
 3 Uber independently developed all of the technology and know-how it uses, and thus has a
 4 complete defense to Waymo's claims. In addition, the alleged trade secrets are not protectable
 5 trade secrets under either the DTSA or CUTSA. Waymo has not taken reasonable measures to
 6 protect the alleged trade secrets, and they do not derive independent economic value from not
 7 being generally known or readily ascertainable. Uber has not misappropriated any of the alleged
 8 trade secrets. Uber did not acquire the alleged trade secrets by improper means.

9 Significantly, Waymo did not plead a claim based on "disclosure" of the alleged trade
 10 secrets and should not be permitted to advance such a claim at trial. Waymo likewise never
 11 pledged theories of liability based on ratification or agency, or any theory of vicarious liability.
 12 For example, Waymo never pled that MoFo or Stroz "used" or "disclosed" the alleged trade
 13 secrets, or that Uber improperly "disclosed" trade secrets to vendors. Even now, Waymo has
 14 never disclosed a theory of damages stemming from the alleged disclosures by Uber to its
 15 vendors or from any alleged use or disclosure by MoFo or Stroz. Waymo should not be permitted
 16 to argue such unpled theories at trial. Moreover, even if such claims had been pled, Uber denies
 17 that it is vicariously liable for any misappropriation by any other person or entity, or liable under
 18 principles of agency or ratification under trade secret law.

19 Even if Uber is found to have misappropriated Waymo trade secrets (which it has not),
 20 Waymo has not suffered any damages as a result of Uber's conduct. Neither Uber nor Waymo
 21 has commercialized their autonomous vehicle technologies. For that reason, Waymo admits that
 22 it has not lost any profits. For the same reason, Uber has not gained any profits, and thus cannot
 23 have been unjustly enriched. Indeed, the Uber technologies that Waymo claims constitute trade
 24 secret misappropriation have never even been commercially deployed on a vehicle. There is zero
 25 revenue associated with any of that technology. Moreover, Waymo's alleged damages are
 26 speculative and based on unreliable expert testimony and thus not recoverable. In addition, even
 27 if Waymo were able to show that any trade secrets had been misappropriated, it would be fully
 28 protected by the injunction it seeks, and a damage award would be nothing more than a windfall.

1 Waymo is not entitled to present any reasonable royalty evidence to the jury because a reasonable
 2 royalty, if any, should be determined by the Court. Waymo's decision not to include its damages
 3 theories—much less the required computation of damages—in its initial disclosures also
 4 precludes it from offering any evidence of damages.

5 Alternatively, if the Court permits Waymo to pursue damages, then Waymo should not be
 6 entitled to injunctive relief. Any injury to Waymo is not immediate or irreparable, Waymo has an
 7 adequate remedy at law, and both the balance of hardships and the public interest favor no
 8 injunction. Moreover, the monetary relief Waymo seeks, if granted, would preclude the grant of
 9 any injunction (and likewise, as explained above, the injunctive relief Waymo seeks, if granted,
 10 would preclude any damages). In no circumstances should Waymo be permitted to seek a
 11 windfall award of (supposed future) damages while also enjoining the conduct alleged to cause
 12 those future damages.

13 Uber also notes that Waymo may not bring any claim under DTSA for acts of
 14 misappropriation that occurred before DTSA's enactment on May 11, 2016. As a result,
 15 Waymo's theories of liability based on acquisition—all of which relate to events before
 16 May 2016—cannot proceed under DTSA.

17 Uber makes the following statement about each alleged trade secret ("ATS"):

18 Uber denies that it misappropriated ATS 2, and specifically denies that it has unlawfully
 19 acquired or used ATS 2.⁴ Uber independently developed the designs that Waymo accuses of
 20 using ATS 2. ATS 2 is not a trade secret, including because Waymo has not taken reasonable
 21 measures to keep ATS 2 secret and because ATS 2 does not derive independent economic value
 22 from not being generally known or ascertainable by the public or others who could make
 23 economic use of it. To the contrary, ATS 2 is readily ascertainable through proper means. No

24 ⁴ Uber disagrees that Waymo is entitled to trial of its claims to the extent they are
 25 predicated on disclosure of the alleged trade secrets or to trial of its theories of liability to the
 26 extent they are predicated on ratification or agency, because Waymo did not plead those issues in
 27 its Amended Complaint. *See generally* Dkt. 23. Out of an abundance of caution, however, Uber
 also denies that it unlawfully disclosed ATS 2, or any other alleged trade secret, and denies that it
 unlawfully acquired, used or disclosed ATS 2, or any other alleged trade secret, by ratification or
 through its agents.

28

1 remedy is proper, because (i) Uber did not misappropriate ATS 2; (ii) Uber has implemented a
 2 design-around that even more clearly avoids use of ATS 2; (iii) Uber has not been unjustly
 3 enriched; (iv) no reasonable royalty is appropriate; and (v) Waymo cannot meet the prerequisites
 4 for injunctive relief.

5 Uber denies that it misappropriated ATS 7, and specifically denies that it has unlawfully
 6 acquired or used ATS 7.⁵ Uber independently developed the designs that Waymo accuses of
 7 using ATS 7. ATS 7 is not a trade secret, including because Waymo has not taken reasonable
 8 measures to keep ATS 7 secret and because ATS 7 does not derive independent economic value
 9 from not being generally known or ascertainable by the public or others who could make
 10 economic use of it. To the contrary, ATS 7 is generally known or readily ascertainable through
 11 proper means. No remedy is proper, because (i) Uber did not misappropriate ATS 7; (ii) Uber has
 12 implemented a design-around that avoids use of ATS 7; (iii) Uber has not been unjustly enriched;
 13 (iv) no reasonable royalty is appropriate; and (v) Waymo cannot meet the prerequisites for
 14 injunctive relief.

15 Uber denies that it misappropriated ATS 9, and specifically denies that it has unlawfully
 16 acquired or used ATS 9.⁶ Uber independently developed the designs that Waymo accuses of
 17 using ATS 9. ATS 9 is not a trade secret, including because Waymo has not taken reasonable
 18 measures to keep ATS 9 secret and because ATS 9 does not derive independent economic value
 19 from not being generally known or ascertainable by the public or others who could make
 20 economic use of it. To the contrary, ATS 9 is generally known or readily ascertainable through
 21 proper means. No remedy is proper, because (i) Uber did not misappropriate ATS 9; (ii) Uber has
 22 contracted a third-party firm to independently develop a substitute for the component alleged to
 23 use ATS 9; (iii) Uber has not been unjustly enriched; (iv) no reasonable royalty is appropriate;
 24 and (v) Waymo cannot meet the prerequisites for injunctive relief.

25
 26

⁵ See note 4 *supra*.

27 ⁶ See note 4 *supra*.
 28

1 Uber denies that it misappropriated ATS 13, and specifically denies that it has unlawfully
 2 acquired or used ATS 13.⁷ Uber independently developed the designs that Waymo accuses of
 3 using ATS 13. ATS 13 is not a trade secret, including because Waymo has not taken reasonable
 4 measures to keep ATS 13 secret and because ATS 13 does not derive independent economic
 5 value from not being generally known or ascertainable by the public or others who could make
 6 economic use of it. To the contrary, ATS 13 is generally known or readily ascertainable through
 7 proper means. No remedy is proper, because (i) Uber did not misappropriate ATS 13; (ii) Uber is
 8 implementing a design-around that avoids use of ATS 13; (iii) Uber has not been unjustly
 9 enriched; (iv) no reasonable royalty is appropriate; and (v) Waymo cannot meet the prerequisites
 10 for injunctive relief.

11 Uber denies that it misappropriated ATS 14, and specifically denies that it has unlawfully
 12 acquired or used ATS 14.⁸ Uber independently developed the designs that Waymo accuses of
 13 using ATS 14. Moreover, ATS 14 is not a trade secret, including because Waymo has not taken
 14 reasonable measures to keep ATS 14 secret and because ATS 14 does not derive independent
 15 economic value from not being generally known or ascertainable by the public or others who
 16 could make economic use of it. To the contrary, ATS 14 is generally known or readily
 17 ascertainable through proper means. No remedy is proper, because (i) Uber did not
 18 misappropriate ATS 14; (ii) Uber is implementing a design-around that even more clearly avoids
 19 use of ATS 14; (iii) Uber has not been unjustly enriched; (iv) no reasonable royalty is
 20 appropriate; and (v) Waymo cannot meet the prerequisites for injunctive relief.

21 Uber denies that it misappropriated ATS 25, and specifically denies that it has unlawfully
 22 acquired or used ATS 25.⁹ Uber independently developed its own test scenarios and LiDAR
 23 requirements. Moreover, ATS 25 is not identified with adequate specificity to qualify as a trade
 24 secret. No remedy is proper, because (i) Uber did not misappropriate ATS 25; (ii) Uber has never

25 ⁷ See note 4 *supra*.

26 ⁸ See note 4 *supra*.

27 ⁹ See note 4 *supra*.

1 acquired or used ATS 25; (iii) Uber has not been unjustly enriched; (iv) no reasonable royalty is
 2 appropriate; and (v) Waymo cannot meet the prerequisites for injunctive relief.

3 Uber denies that it misappropriated ATS 90, and specifically denies that it has unlawfully
 4 acquired or used ATS 90.¹⁰ Uber independently developed the designs that Waymo accuses of
 5 using ATS 90. Moreover, ATS 90 is not a trade secret, including because Waymo has not taken
 6 reasonable measures to keep ATS 90 secret and because ATS 90 does not derive independent
 7 economic value from not being generally known or ascertainable by the public or others who
 8 could make economic use of it. To the contrary, ATS 90 is generally known or readily
 9 ascertainable through proper means. Uber also argues that ATS 90 is not identified with adequate
 10 specificity to qualify as a trade secret. No remedy is proper, because (i) Uber did not
 11 misappropriate ATS 90; (ii) Uber has not been unjustly enriched; (iii) no reasonable royalty is
 12 appropriate; and (iv) Waymo cannot meet the prerequisites for injunctive relief.

13 Uber denies that it misappropriated ATS 111, and specifically denies that it has
 14 unlawfully acquired or used ATS 111.¹¹ Uber independently decided not to develop a system of
 15 the sort referenced in ATS 111. Moreover, ATS 111 is not a trade secret, including because
 16 Waymo has not taken reasonable measures to keep ATS 111 secret and because ATS 111 does
 17 not derive independent economic value from not being generally known or ascertainable by the
 18 public or others who could make economic use of it. No remedy is proper, because (i) Uber did
 19 not misappropriate ATS 111; (ii) Uber has never acquired or used ATS 111; (iii) Uber has not
 20 been unjustly enriched; (iv) no reasonable royalty is appropriate; and (v) Waymo cannot meet the
 21 prerequisites for injunctive relief.

22 **II. RELIEF SOUGHT**

23 **A. Waymo's Submission**

24 Waymo seeks the following relief:

25
 26 ¹⁰ See note 4 *supra*.

27 ¹¹ See note 4 *supra*.

1 1. That the Court award judgment in Waymo's favor and against Defendants on all
2 causes of action.

3 2. That the Court award Waymo damages in an amount to be further proven at trial.

4 3. That the Court permanently enjoin Uber, Ottomotto LLC, and/or Otto Trucking
5 LLC, its agents, servants, employees, attorneys, and all others in active concert or participation
6 with the Defendants, from misappropriating Waymo's trade secrets.

7 4. That the Court award Waymo exemplary damages.

8 5. That the Court award Waymo attorneys' fees and costs.

9 6. That the Court award Waymo such other and further relief as this Court may deem
10 to be just and proper.

11 **B. Uber's Submission**

12 1. Judgment in favor of Uber and Ottomotto and against Waymo on all claims.

13 2. Judgment that Waymo shall recover nothing from Uber or Ottomotto;

14 3. Judgment that no injunction shall run against Uber or Ottomotto;

15 4. Judgment dismissing Waymo's claims against Uber and Ottomotto with prejudice;

16 5. An award of attorneys' fees under Cal. Civ. Code § 3426.4 or

17 18 U.S.C. § 1836(b)(3)(D);

18 6. An award of costs under Cal. Civ. Code § 3426.4 and 18 U.S.C. § 1920;

19 7. An award of damages for wrongful enjoinderment, and execution of Waymo's
20 preliminary injunction bond; and

21 8. Such other and further relief to Uber and Ottomotto as the Court may deem just
22 and proper.

23 **III. STIPULATED FACTS**

24 The parties jointly stipulate as follows:

25 1. Plaintiff Waymo LLC is a subsidiary of Alphabet Inc. with its principal place of
26 business located in Mountain View, California 94043.

27 2. Defendant Uber Technologies, Inc. is a Delaware company with its principal place
28 of business at 1455 Market Street, San Francisco, California.

3. Defendant Ottomotto LLC (f/k/a 280 Systems Inc.) is a Delaware limited liability company with its principal place of business located at 737 Harrison Street, San Francisco, California.

4. Anthony Levandowski is a former employee of Google who worked on its self-driving car program.

5. Anthony Levandowski was Uber's Vice President of Engineering for approximately nine months and was in charge of Uber's self-driving vehicle program during that time.

6. Anthony Levandowski was CEO and a founder of Ottomotto LLC.

7. Levandowski left Waymo on January 27, 2016.

8. As of August 2016, Uber had not deployed a LiDAR that was designed in-house.

9. Uber fired Anthony Levandowski on May 26, 2017.

IV. FACTUAL ISSUES THAT REMAIN TO BE TRIED

The parties continue to dispute the following issues. Where fewer than all parties agree that a factual issues remains to be tried, the propounding party is indicated in brackets.

Waymo's Reasonable Measures to Keep Its Alleged Trade Secrets Secret:

1. Whether Waymo takes reasonable measures to protect its trade secrets.

Waymo's Alleged Trade Secrets Are Not Generally Known or Readily Ascertainable:

2. Whether any of Waymo's asserted trade secrets are generally known in the relevant field, or are readily ascertainable.

3. Whether any of Waymo's asserted trade secrets derive independent economic value from their secrecy.

Misappropriation of Waymo's Alleged Trade Secrets:

4. Whether Uber or Ottomotto misappropriated any of the alleged trade secrets by improperly acquiring, then¹² disclosing¹³ or using any of the alleged trade secrets in violation of the DTSA or CUTSA.

¹² [Waymo] Waymo disagrees that it must show both improper acquisition and either disclosure or use in order to prove its claim for trade secret misappropriation. Although the (Footnote continues on next page.)

1 a. [Uber] Whether Uber intended to secure dominion over any of the alleged
2 trade secrets, as opposed to passively or inadvertently coming into
3 possession of any alleged trade secret.

4 5. Whether Uber or Ottomotto acquired any of the alleged trade secrets while
5 knowing or having reason to know that Uber or Ottomotto, or the person from whom Uber
6 or Ottomotto acquired the alleged trade secret, used improper means to acquire it.

7 6. Whether any of the attendant circumstances required for misappropriation by use
8 existed, including, at the time of any use:

9 a. Whether Uber or Ottomotto acquired knowledge of an alleged trade secret
10 by improper means;

11 b. Whether Uber or Ottomotto knew or had reason to know that its knowledge
12 of an alleged trade secret came from or through a person who had acquired
13 the alleged trade secret through improper means; or

14 c. Whether Uber or Ottomotto knew or had reason to know that its knowledge
15 of an alleged trade secret came from or through a person who had a duty to
16 keep secret the alleged trade secret.

17 7. Whether Uber or Ottomotto used any of the alleged trade secrets under
18 circumstances that constitute misappropriation by use.

19 8. Whether Uber or Ottomotto independently developed any of the designs or know-
20 how accused of using the alleged trade secrets.

21 9. Whether any misappropriation of the alleged trade secrets is ongoing.

22 (Footnote continued from previous page.)

23 Court's penultimate tentative jury instructions include an instruction requiring such a showing to
24 support Waymo's recovery of unjust enrichment damages (Waymo will object to that instruction
25 in its January 29, 2018 jury instruction submission), Waymo can prove its claim for trade secret
26 misappropriation by showing that Defendants improperly acquired one or more Waymo trade
27 secrets, irrespective of any use or disclosure. A jury finding of misappropriation based solely on
28 Defendants' improper acquisition is sufficient for the Court to enter permanent injunctive relief.

13 [Uber] Uber and Ottomotto disagree that Waymo is entitled to trial on a disclosure theory. See note 4 *supra*.

1 ***Joint and Several/Vicarious Liability***

2 10. [Waymo] Whether Uber and/or Ottomotto are liable for trade secret
3 misappropriation based on the actions of Anthony Levandowski, Stroz Friedberg, and/or
4 Morrison & Foerster.

5 ***Willful and Malicious Trade Secret Misappropriation***

6 11. Whether any misappropriation of Waymo's trade secrets by Uber or Ottomotto
7 was willful and malicious.

8 ***Damages***

9 12. Whether Uber or Ottomotto was unjustly enriched by any misappropriation of the
10 alleged trade secrets by Uber or Ottomotto, and if so, the amount of that unjust
11 enrichment.

12 13. [Waymo] What amount of damages for a reasonable royalty Waymo is entitled to
13 as a result of any misappropriation of Waymo's trade secrets by Uber or Ottomotto.

14 14. [Waymo] To the extent any misappropriation of Waymo's trade secrets by Uber or
15 Ottomotto was willful and malicious, the amount of exemplary damages that should be
16 awarded.

17 ***Affirmative Defenses***

18 15. [Uber] Whether Waymo made any claim of misappropriation of any of its
19 121 alleged trade secrets in bad faith.

20 ***Issues to be Tried to the Court***

21 16. [Uber] Should the jury find misappropriation and that it was willful and malicious,
22 the Court will decide whether to award exemplary damages and, if so, what amount.

23 17. [Uber] Because Waymo has not timely or properly disclosed percipient witnesses
24 to testify regarding its damages, and because this Court has stricken Waymo's damages
25 expert, there is no basis for a jury to award damages in this case. Further, Waymo has
26 failed to proffer sufficient evidence upon which objective, non-speculative, and properly-
27 apportioned damages could be awarded. *See, e.g., Oracle Corp. v. SAP AG*, 765 F.3d
28 1081, 1089, 1093 (9th Cir. 2014).

1 18. [Waymo] Waymo disagrees with Uber's position. In its order excluding Michael
 2 Wagner, the Court expressly said that Waymo would be allowed to present damages
 3 evidence to the jury and argue its damages case in closing. (Dkt. 2166.) And when Uber
 4 raised this issue at the November 14, 2017 hearing, the Court again confirmed that
 5 Waymo will be allowed to introduce damages evidence. (11/14/17 Hr'g Tr. at 85-89.)
 6 Waymo has good cause to add a limited number of witnesses to its witness list in light of
 7 the Court's exclusion of Waymo's damages expert, Michael Wagner. Waymo submitted a
 8 précis on this subject on November 26, 2017 (Dkt. 2270), which the Court granted on
 9 November 27. (Dkt. 2274.) Waymo subsequently submitted its motion to supplement its
 10 trial witness list on November 29 and is currently awaiting the Court's ruling. Waymo is
 11 also meeting and conferring with Uber regarding the authenticity and admissibility of
 12 certain exhibits it plans to admit through an Uber Custodian of Records.

13 19. [Uber] Whether Waymo is entitled to a reasonable royalty for any
 14 misappropriation of the alleged trade secrets, and if so, the amount of that royalty.

15 20. [Uber] The amount of any of reasonable attorney's fees awarded to any party.

16 21. Whether Waymo would be irreparably harmed absent an injunction.

17 22. Whether Waymo has an adequate remedy at law.

18 23. Whether the balance of hardships favors granting or denying an injunction.

19 24. Whether the public interest favors granting or denying an injunction.

20 **V. EXHIBIT AND WITNESS LISTS**

21 The parties attach their Second Amended Joint Exhibit List as Appendix A. Waymo's
 22 Fourth Amended Witness List for its case-in-chief witnesses is attached as Appendix B.
 23 Defendants' Objections to Waymo's Fourth Amended Witness List is attached as Appendix C.
 24 Uber and Ottomotto's Second Amended Witness List for its case-in-chief witnesses is attached as
 25 Appendix D. Waymo's Objections to Uber and Ottomotto's Second Amended Witness List is
 26 attached as Appendix E.

27 Waymo reserves the right to amend or supplement the Joint Proposed Pretrial Order and
 28 Joint Exhibit List and its Witness List based upon newly produced evidence.

Uber and Ottomotto also reserve the right to amend or supplement the Joint Proposed Pretrial Order and Joint Exhibit List and its Witness List based upon newly produced evidence.

VI. MISCELLANEOUS

1. The parties agree that witnesses may be given a binder or binders containing copies of the exhibits to be used during their examinations, rather than the original exhibits in the courtroom. The examining party shall give the opposing side the opportunity to inspect the exhibit binder before it is handed to the witness to ensure that both sides agree that the binders contain correct copies of the original exhibits. The parties respectfully request the Court's approval to do so.

Dated: January 23, 2018

QUINN EMANUEL URQUHART & SULLIVAN,
LLP

By /s/ Charles K. Verhoeven
Charles K. Verhoeven
Attorneys for WAYMO LLC

Dated: January 23, 2018

MORRISON & FOERSTER LLP

By: /s/ Arturo J. González
ARTURO J. GONZÁLEZ
Attorneys for Defendants
UBER TECHNOLOGIES, INC.
and OTTOMOTTO LLC

ATTESTATION OF E-FILED SIGNATURE

I, Charles K. Verhoeven, am the ECF User whose ID and password are being used to file this Second Amended Joint Pretrial Order. In compliance with General Order 45, X.B., I hereby attest that Arturo J. González concurred in this filing.

Dated: January 23, 2018

/s/ Charles K. Verhoeven
Charles K. Verhoeven